

CLAUSE I-8 – ANTI-KICKBACK PROCEDURES (August 2002)

(a) Definitions.

"Kickback", as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime subcontractor, prime subcontractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime subcontract or in connection with a subcontract relating to a prime contract.

"Person", as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract", as used in this clause, means a contract or contractual action entered into by SURA for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime contractor" as used in this clause, means a person who has entered into a prime contract with SURA.

"Prime contractor employee", as used in this clause, means any officer, partner, employee, or agent of a prime contractor.

"Subcontract", as used in this clause, means a subcontract or contractual action entered into by a prime subcontractor or lower-tier subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor", as used in the clause –

- (1) Means any person, other than the prime subcontractor, who quotes to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and
- (2) Includes any person who quotes to furnish or furnishes general supplies to the prime subcontractor or a higher-tier subcontractor.

"Subcontractor employee", as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58)(the Act), prohibits any person from –

- (1) Providing or attempting to provide or quoting to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the subcontract price charged by a prime subcontractor to SURA or in the subcontract price charged by a lower-tier subcontractor to a prime subcontractor or higher-tier subcontractor.

- (c) (1) The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
- (2) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the Business Services Director of SURA or his authorized designee.
- (3) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
- (4) The Subcontracting Officer may –
- (i) Offset the amount of the kickback against any monies owed by SURA under this subcontract and/or
  - (ii) Direct that the Subcontractor withhold from sums owed his subcontractor, the amount of the kickback. The Subcontracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to SURA unless SURA has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Subcontractor shall notify the Subcontracting Officer when the monies are withheld.
- (5) The Subcontractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this subcontract.